

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION**

MAWULE TEPE,

Plaintiff,

v.

BANK OF AMERICA,

Defendant.

Case No. 1:22-cv-261

Removed from the Circuit Court of
Bradley County, Tennessee
Case No. V-22-540

NOTICE OF REMOVAL

Defendant, Bank of America, N.A. (“BANA”), by and through its undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, files this notice of removal (“Notice”) from the Circuit Court for the 10th Judicial District, Bradley County, Tennessee, to the United States District Court for the Eastern District of Tennessee, Southern Division. Removal is based on diversity jurisdiction because Plaintiff Mawule Tepe (“Plaintiff”) and BANA have complete diversity of citizenship and the amount in controversy exceeds \$75,000.00. In support of this Notice, BANA states as follows:

I. FACTS AND PROCEEDINGS

1. On or about September 3, 2022, Plaintiff filed his Complaint in the Circuit Court of Bradley County, Tennessee (the “Circuit Court”). The Circuit Court case is styled: *Mawule Tepe v. Bank of America*, Case No. V-22-540 (the “State Court Action”).

2. The Complaint is based upon an alleged breach of contract and tort actions arising in connection with Plaintiff’s breach of an Agreed Order that he voluntarily entered with BANA. (See Compl., pp. 7-26). Plaintiff requests damages in excess of \$75,000.00. (*Id.*, ¶ 4.)

3. On September 6, 2022, the Circuit Court issued summons (the “Summons”) to BANA. The Summons incorrectly identified BANA’s address for service of process as 655 Paper Mill Road, Newark, Delaware 19711.

4. However, Plaintiff filed a return of the Summons in the State Court Action, which indicates that Plaintiff sent the Summons and the Complaint to the Tennessee Secretary of State and that the Tennessee Secretary of State received the Summons and the Complaint on September 14, 2022. Per the Affidavit and Endorsement provided by the Tennessee Secretary of State, the Secretary of State mailed original and certified copies of the Summons and the Complaint on September 19, 2022 to BANA at the address on the Summons, addressed to Brian Moynihan, CEO, and the documents were allegedly delivered to BANA on September 23, 2022. The Tennessee Secretary of State filed the Affidavit and Endorsement in the State Court Action on or about September 29, 2022.

II. THIS NOTICE IS TIMELY FILED

5. This Notice is timely-filed under 28 U.S.C. § 1446(b). As noted above, the Circuit Court issued the Summons on September 6, 2022 indicating that the Summons was to be served on BANA. Per the Tennessee Secretary of State’s Affidavit and Endorsement, it received the original and certified copies of the process on September 14, 2022, and mailed certified copies of the Summons and the Complaint on September 19, 2022 to BANA at the address provided by the Plaintiff, and, on or about September 23, 2022, BANA allegedly received the documents from the Secretary of State. The Secretary of State filed its Affidavit and Endorsement in the State Court Action on or about September 29, 2022. Assuming for argument’s sake that Plaintiff was entitled to serve, and properly served, the Tennessee Secretary of State with the Summons and the Complaint, BANA is filing this Notice within thirty days of September 14, 2022, *i.e.*, the date that

the Tennessee Secretary of State's Office received the Summons and the Complaint. *See* 28 U.S.C. § 1446(b)(1), (2)(B) (stating that “[e]ach defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal”). However, BANA does not concede or admit that it has been properly served with the Summons and the Complaint, and BANA hereby reserves the right to raise insufficient service of process and all other applicable defenses in this Court.

III. REMOVAL PROCEDURES

6. Removal of this case is proper under 28 U.S.C. § 1441(a), which provides in pertinent part that, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

7. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1441(a). Defendants seek to remove this case to the United States District Court for the Eastern District of Tennessee, Southern Division. The Circuit Court of Bradley County, Tennessee, is located within this District and cases arising from Bradley County are properly assigned to this division of the Court. *See* 28 U.S.C. § 123(a)(3).

8. In compliance with 28 U.S.C. § 1446(a), a copy of all “process, pleadings, and orders” received by BANA is attached hereto as **Exhibit A**.

9. In accordance with 28 U.S.C. § 1446(d), a true and correct copy of this Notice (without exhibits) is being filed concurrently with the Clerk of the Circuit Court of Bradley County, Tennessee in the State Court Action, and served upon all parties of record.

IV. THIS COURT HAS DIVERSITY JURISDICTION

10. This Court has original jurisdiction over this action under 28 U.S.C. § 1332, which provides: “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between – (1) citizens of different States . . .” 28 U.S.C. § 1332(a).

11. Pursuant to 28 U.S.C. § 1441(b), “[a] civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b).

12. Plaintiff is a citizen and resident of Bradley County, Tennessee. (*See Compl., ¶ 6.*)

13. BANA, a national banking association organized under the laws of the United States, is a citizen of North Carolina for purposes of diversity of citizenship because its articles of association establish its main office as located in Charlotte, North Carolina. *See Wachovia Bank v. Schmidt*, 546 U.S. 303, 307, 126 S. Ct. 941, 945 (2006) (“[A] national bank, for § 1348 purposes, is a citizen of the State in which its main office, as set forth in its articles of association, is located.”)

14. Consequently, complete diversity of citizenship exists between the parties.

15. The amount in controversy is also met. Plaintiff states in the Complaint that the amount in controversy in this action exceeds \$75,000.00, exclusive of interest and costs. (*See Compl., ¶ 4.*) The amount of damages pled in good faith in the initial pleading is deemed to be the amount in controversy. 28 U.S.C. § 1446(c)(2). Plaintiff’s Complaint is subject to the requirements of Rule 11 of the Federal Rules of Civil Procedure and, therefore, bears with it the certification that the damage claims presented are warranted and with evidentiary support, thereby satisfying the good faith requirement. Thus, the amount in controversy exceeds \$75,000.00.

V. CONCLUSION

WHEREFORE, BANA respectfully requests the above-captioned action now pending in the Circuit Court for the 10th Judicial District, Bradley County, Tennessee, be removed to the United States District Court for the Eastern District of Tennessee, Southern Division, and that said United States District Court assume jurisdiction of this action and enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

This is the 14th day of October 2022.

Respectfully submitted,

/s/ Frankie N. Spero

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Removal** was filed with the Clerk of the Court using the CM/ECF system and served via email on October 14, 2022 and via U.S. Mail, first class postage prepaid, on October 17, 2022, on the following:

Mawule Tepe
3403 Peerless Road, NW #G
Cleveland, Tennessee 37312
tepealex2002@gmail.com
Pro Se Plaintiff

/s/ Frankie N. Spero

Frankie N. Spero